

THE HON' BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.4601 OF 2016

ORDER:

Heard the learned counsel for the revision petitioner, who is a third party to the suit in O.S.NO.2422 of 2011 on the file of the V Senior Civil Judge, City Civil Court, Hyderabad.

2. The above suit is filed by the 1st respondent/ sole plaintiff herein, against the 2nd respondent/ sole defendant herein for eviction claiming as the 2nd respondent is tenant under 1st respondent/ plaintiff. The suit is pending since 2011. It is, in the above suit, by application in I.A.No.53 of 2016, the petitioner/ third party herein wants to come on record as co-defendant saying he is a necessary and proper party to the suit /is and behind his back the 1st respondent/ plaintiff wants to obtain a collusive decree. The lower Court, after contest, dismissed the application on 22.03.2016, which is impugned herein.

3. The order of the lower Court shows that as per the judgment of this Court in Nandikonda Sambaiah v. Thota Thomasayya (1997(2) APLJ 72 SN), in an eviction suit filed by the landlord against the tenant, third party who lays his claim in respect of the suit schedule property cannot be impleaded as it would change the nature of the relief claimed in the suit. It is pursuant to which, dismissed the petition.

4. In fact, from the very order it shows that the petitioner's father against the plaintiff's father maintained R.C.C.No.344 of 2008, which is still pending. The petitioner herein impleaded as 2nd petitioner therein claiming as donee from his father under registered gift deed dated 11.11.2009 bearing registration No.2681. It is from that, he wants to come on record herein. It is not even a case that the respondent therein

admitted any tenancy relationship in the counter, while otherwise opposing the eviction petition. It shows that the so called tenant in the R.C.C.No.344 of 2008 is disputing the landlord and tenant relationship.

5. Having regard to the above, there is nothing to interfere with the impugned order even from placing reliance on the expression in *Krishan Lal and another v. Sudesh Kumari and others*¹, where mainly referring to the expression of the Apex Court at para-16 of *Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay* (AIR 1992(2) SCC 524 that though the plaintiff-appellant is *dominus litis* and is not bound to sue every possible adverse claimant in the same suit and he may choose to implead only those persons as defendants against whom he wishes to proceed, but the Court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. The question of impleadment of a party has to be decided on the touchstone of Order 1, Rule 10 which provides only a necessary or a proper party may be added. In the light of the clear language of the rule, it is not open to the appellant to contend that a person cannot be added as defendant even in a case where his presence enable the Court to decide the matter effectively. A necessary party is one without whom no order can be made. A proper party is one in whose absence an order can be made though not effectively. A proper party is thus one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case. The Court is empowered to join a person whose presence is necessary

¹ AIR 1998 Punjab and Haryana 168

for the prescribed purpose and cannot under the rule direct the addition of a person whose presence is not necessary for that purpose.

6. Even from the probability, the petitioner is not a necessary party for nothing to show without his presence the *lis* covered by the suit for the so called eviction cannot be decided. The 2nd respondent is not even a party to the Rent Control Case and if at all to be impleaded, it is left open to the petitioner from the principle of law laid down therein as a proper party. Otherwise the remedy is to maintain an independent suit. Hence, there is nothing to interfere with the impugned order.

7. With the above observations, the Civil Revision Petition is disposed of.

8. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. There shall be no order as to costs.

Date: 22.11.2017
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DR. B. SIVA SANKARA RAO, J

